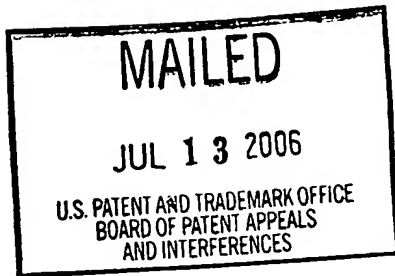


UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte THOMAS DAG HORN and
SANDRA MARCHESE JOHNSON

Application No. 10/081,185

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on July 5, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

The Examiner's Answer mailed February 23, 2006 is defective because section 8, of the answer states that "no evidence is relied upon by the examiner." However, it is noted that the examiner applied prior art. See the Manual of Patent Examining Procedure (MPEP) §1207.02. Appropriate correction is required.

The Appeal Brief is defective because the Summary of Claimed Subject Matter does not map the claimed invention to the independent claims as set forth in 37 CFR § 41.37(c)(1)(v) which states:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The Appeal Brief is also defective because it is missing the heading "Related Proceedings Appendix." This is needed to process the appeal.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1) to list the prior art being relied on under the heading Evidence Relied Upon in paragraph 8 in the Examiner's Answer

2) to hold the Appeal Brief of December 5, 2005 defective;


3) for applicant to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;

4) for the examiner to consider the substitute Appeal Brief and, if necessary, vacate the Examiner's Answer mailed February 23, 2006, and issue a revised Examiner's Answer; and

Application No. 10/081,185

5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
DALE M. SHAW
Program and Resource Administrator
(571) 272-9797

DMS/eld

HUGH MCTAVISH
MCTAVISH PATENT FIRM
429 BIRCHWOOD COURTS
BIRCHWOOD MN 55110